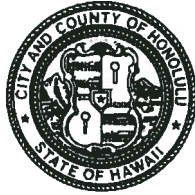


DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov

KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR

GARY T. KUOKAWA
DEPUTY DIRECTOR

January 3, 2014

The Honorable Ron Menor, Chair
Committee on Executive Matters
and Legal Affairs
Honolulu City Council
530 South King Street, Room 202
Honolulu, Hawaii 96813

RECEIVED
CITY CLERK
C & C OF HONOLULU
2014 JAN -3 PM 12:17

Dear Chair Menor:

SUBJECT: Honolulu Affordable Housing Preservation Initiative

Attached, is a letter dated December 31, 2013, that the City received from HAHP, LLC requesting an extension of the Financing Contingency Date to March 31, 2014. The City's response dated January 2, 2014 is also attached.

Sincerely,

A handwritten signature in black ink, appearing to read "Nelson H. Koyanagi, Jr.", is written over a horizontal line.

Nelson H. Koyanagi, Jr.
Director

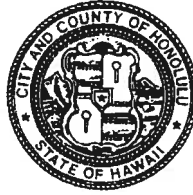
Attachment

cc: The Honorable Ernest Y. Martin, Chair
✓ The Honorable Ikaika Anderson, Councilmember
The Honorable Stanley Chang, Councilmember
The Honorable Carol Fukunaga, Councilmember
The Honorable Breene Harimoto, Councilmember
The Honorable Ann Kobayashi, Councilmember
The Honorable Joey Manahan, Councilmember
The Honorable Kymberly Marcos Pine, Councilmember

RECEIVED
2014 JAN -3 A 8:43
CITY COUNCIL
HONOLULU, HAWAII

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3901 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov

KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR

GARY KUOKAWA
DEPUTY DIRECTOR

January 2, 2014

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED
AND FACSIMILE ((626) 294-9270)**

Honolulu Affordable Housing Partners, LLC
c/o Highland Property Development LLC
250 W. Colorado Boulevard, Suite 210
Arcadia, California 91007
Attn: Mr. William E. Rice

Dear Mr. Rice:

Re: Honolulu Affordable Housing Preservation Initiative (“HAHPI”)

This letter responds to the letter dated December 31, 2013 from Honolulu Affordable Housing Partners, LLC (“HAHP”).

The City and County of Honolulu (the “City”) continues to believe that it would be in the best interest of the people of the City, and beneficial to HAHP, to continue to find a way to close on the transaction contemplated in the Purchase and Sale Agreement, as amended and restated, described in your letter (the “PSA”). For that reason, the City has, notwithstanding HAHP’s letters of December 10, 2013, and December 31, 2013, committed significant time towards coming up with solutions that would allow the City and HAHP to close by March 31, 2014, the closing deadline.

The City is willing to continue to work towards that goal, but only if HAHP is also committed to doing so.

While your letter of December 31 states that, as of that date, which is the Financing Contingency Date established by the PSA, HAHP has not obtained the various components of the New Financing required to close the transaction by the Extended Closing Date of March 31, 2014, and while HAHP requests that the City consent by January 10, 2014, to the extension of the Financing Contingency Date to March 31, 2014, you do not indicate whether, if the City were to consent, HAHP remains committed to using good faith efforts to proceed towards closing and reasonably expects to be able to

Honolulu Affordable Housing Partners, LLC
January 2, 2014
Page 2

close by the closing deadline. If this is not the case, it makes little sense for the City to consent to your request.

In order for the City to determine whether there is a good faith basis for your request to extend the Financing Contingency Date, please let me know whether (1) there is a reasonable possibility that such extension will enable HAHP to close by March 31, 2014, and (2) if the City were to consent, HAHP remains committed to using good faith efforts to proceed towards closing.

We would appreciate your response by **Monday, January 6, 2014, 4:00 P.M.**

The City would have preferred to work towards a closing without being subject to the threat of litigation. However, in response to your reiteration and reaffirmation of HAHP's Notice of Default dated December 10, 2013, the City unequivocally denies that it has breached the terms of the PSA and that HAHP is entitled to any remedies thereunder, including a return of its deposit from Escrow and liquidated damages. The City affirms its December 18, 2013 response to the Notice of Default.

Sincerely,



Nelson H. Koyanagi, Jr.
Director

cc: William E. Rice (via hand delivery and e-mail: b.rice@highlandcompanies.com)
Richard W. Gushman, II (via certified mail, return receipt requested and
e-mail: dgush@dgmgrp.com)
Stephen M. Gelber, Esq. / Joseph A. Dane, Esq. (via hand delivery and e-mail:
sgelber@gelberlawyers.com and jdane@gelberlawyers.com)
Ember Lee Shinn, Managing Director
Pamela A. Witty-Oakland, Director of Community Services
Donna Y. L. Leong, Corporation Counsel

HONOLULU AFFORDABLE HOUSING PARTNERS, LLC

745 Fort Street, Suite 1400
Honolulu, Hawaii 96813

*14 JAN -2 P12:38

December 31, 2013

DIRECTOR OF BUDGET
FISCAL SERVICES
C/O OF HONOLULU

Protective Notice and Request Under Sections 5.14, 6.1(f), and 6.3 of Purchase And Sale Agreement

VIA HAND-DELIVERY AND CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Nelson H. Koyanagi Jr., Director
Department of Budget and Fiscal Services
Honolulu Hale
530 South King Street, Suite 208
Honolulu, Hawaii 96813

Re: Honolulu Affordable Housing Preservation Initiative

Dear Director Koyanagi:

As you are aware, on October 18, 2012, the City and County of Honolulu (the "City") and Honolulu Affordable Housing Partners, LLC ("HAHP LLC") entered into that certain Purchase And Sale Agreement (the "PSA"), concerning the City's sale of long-term leases to twelve affordable housing and mixed-use properties. Pursuant to a Restated First Amendment to Purchase and Sale Agreement, dated effective June 28, 2013, the Financing Contingency Date (the date by which HAHP LLC was to have satisfied certain Financing Contingencies), was extended to December 31, 2013.¹ The Financing Contingency Date is the date by which HAHP LLC had to secure its New Financing for the transaction under the PSA.

Before the Financing Contingencies could be fully satisfied, however, the City Council took up for consideration two proposed resolutions to rescind or cancel the PSA. The City had both explicit and implied obligations under the PSA to cooperate and not to take any action to interfere with HAHP LLC's rights under the PSA, including HAHP LLC's ability to secure the New Financing contemplated by the PSA that HAHP LLC required for closing. The introduction and consideration of the two proposed resolutions to rescind or cancel the PSA both interfered with and materially and adversely undermined the financing that HAHP LLC was arranging for the transaction. Therefore, on December 10, 2013, we

¹ Capitalized terms not defined herein shall have the respective meanings set forth in the PSA.

HONOLULU AFFORDABLE HOUSING PARTNERS, LLC

Mr. Nelson H. Koyanagi Jr., Director
Department of Budget and Fiscal Services
December 31, 2013
Page 2

transmitted to you a formal Notice of Default declaring that, as a result of the City's breach of its obligations under the PSA, the City was in default under the PSA. We further advised the City that, if the default continued for, and was not cured within, ten (10) Business Days after the date of the Notice of Default, HAHP LLC would be entitled to exercise all of the remedies to which HAHP LLC was entitled under the PSA and otherwise by law. By letter dated December 11, 2013, the City Administration urged the City Council to "remove any cloud over the transaction by affirmatively stating – for the record – its support for the transaction." Not only did the City Council refuse to do so, but the City Council continued for further consideration the two proposed resolutions to rescind or cancel the PSA, leaving the threat to rescind or cancel the transaction still looming.

Yet, despite the introduction of the two proposed resolutions, the Council's refusal to state its support for the transaction, and the Council's continued consideration of the two proposals to rescind or cancel the PSA, the City, by letter dated December 18, 2013, has most recently notified us that the City "disagrees with" our claim that the City is in default under the PSA as a result of the actions taken by the City that have prevented us from finalizing our financing for the transaction. As of the date of this letter, therefore, the City has not only failed to cure its default under the PSA, but has now taken the position that the City is not in breach of its obligations under the PSA, despite the actions taken by the City that have undermined HAHP LLC's ability to finance the transaction and rendered worthless the approximately \$4 million that we have already invested in the transaction.

HAHP LLC, therefore, rejects the City's assertion that the City is not in default under the PSA, and HAHP hereby reiterates and reaffirms the Notice of Default, dated December 10, 2013, that HAHP LLC previously served on the City. Now that the ten-day period contemplated by Section 8.1(b) has elapsed and the City has failed to cure its default under the PSA, HAHP LLC is entitled to, and hereby gives notice to the City that HAHP LLC is entitled to exercise, all of its rights and remedies under the PSA, including, without prejudice to any other rights and remedies that HAHP LLC may have under law, the right to demand that Escrow return the Deposit to HAHP LLC and that the City remit to HAHP LLC, at a minimum, \$2,000,000 in liquidated damages in accordance with Section 8.2(a) of the PSA.²

Aside from the City's default under the PSA, Sections 2.2(c), 5.14, and 6.1(f) independently provide that HAHP LLC's obligations under the PSA are

² HAHP LLC continues to research whether, despite the liquidated damages provision of the PSA, HAHP LLC is entitled to recover the full amount of its damages as a result of the City's breach.

HONOLULU AFFORDABLE HOUSING PARTNERS, LLC

Mr. Nelson H. Koyanagi Jr., Director
Department of Budget and Fiscal Services
December 31, 2013
Page 3

conditioned on HAHP LLC being able to secure the New Financing required to close the transaction on terms and conditions acceptable to HAHP LLC, and that, if such condition is not satisfied, HAHP LLC may terminate the PSA and, in such event, the Deposit, plus all accrued interest thereon, shall be returned to HAHP LLC. Section 5.14(f) further provides, however, that HAHP LLC may request the City's consent to an extension of the Financing Contingency Date. As of the date of this letter HAHP LLC has not obtained the various components of the New Financing required to close the transaction by the Extended Closing Date of March 31, 2014.

Accordingly, without waiving, prejudicing, or modifying any of HAHP LLC's rights as a result of the City's breach under the PSA or HAHP LLC's rights pursuant the Notice of Default, and in order to preserve, protect, and exercise HAHP LLC's independent rights under the PSA relating to the Financing Contingencies for the New Financing specified in the PSA, HAHP LLC requests that the City consent to the extension of the Financing Contingency Date to March 31, 2014. Under such extension of the Financing Contingency Date to March 31, 2014, HAHP LLC shall retain all rights pursuant to Sections 5.14, 6.1(f) and 6.3 of the PSA as modified by the Financing Contingency Date. In the event that the City does not, by January 10, 2014, approve and consent to such extension of the Financing Contingency Date until March 31, 2014, HAHP LLC hereby elects, without waiving, prejudicing, or modifying its rights under the Notice of Default previously transmitted to the City, to terminate the PSA for pursuant to Sections 5.14, 6.1(f), and 6.3 of the PSA effective as of today's date.

Please let us know whether the City consents to and approves the requested extension of the Financing Contingency Date by January 10, 2014. If the City does not agree to the requested extension of the Financing Contingency Date, we will give Escrow instructions immediately to return the Deposit, plus all interest earned thereon, to HAHP LLC. We will expect the City's cooperation in this regard. Whether the City intends to continue to dispute that it has breached of its obligations under the PSA by undermining HAHP LLC's ability to finance the transaction, HAHP LLC is independently entitled to return of the Deposit, plus the interest earned on the Deposit, under and by reason of Sections 2.2(c), 5.14, and 6.1(f) and 6.3 of the PSA.

HONOLULU AFFORDABLE HOUSING PARTNERS, LLC

Mr. Nelson H. Koyanagi Jr., Director
Department of Budget and Fiscal Services
December 31, 2013
Page 4


Please be advised that the return of the Deposit together with the interest earned thereon and the receipt thereof by HAHP LLC shall not in any way waive or prejudice HAHP LLC's claims for damages under the Section 8.2(a), the Notice of Default and as otherwise provided by law, relating to the City's default under the PSA.

Sincerely,

HONOLULU AFFORDABLE HOUSING PARTNERS, LLC
a Hawaii limited liability company

By **Highland Property Development LLC**
A California limited liability company
Its Manager and Member

By:


William E. Rice
Its Authorized Manager

cc: Department of Community Services
715 South King Street, Suite 311
Honolulu, Hawaii 96813
Attention: Director

Schlack Ito, LLLC
Topa Financial Center
745 Fort Street, Suite 1500
Honolulu, Hawaii 96813
Attention: Carl J. Schlack, Jr., Esq.

Department of Corporation Counsel
530 South King Street, Room 100
Honolulu, Hawaii 96813
Attention: Gordon Nelson, Esq.

CBRE, Inc.
Pauahi Tower, Suite 1800
1003 Bishop Street
Honolulu, Hawaii 96813-3544
Attention: Scott B. Gomes

HONOLULU AFFORDABLE HOUSING PARTNERS, LLC

Mr. Nelson H. Koyanagi Jr., Director
Department of Budget and Fiscal Services
December 31, 2013
Page 5

Via Email:

b.rice@highlandcompanies.com

Honolulu Affordable Housing
Partners, LLC
c/o Highland Property Development,
LLC
250 W. Colorado Boulevard, Suite 210
Arcadia, California 91007

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